

Indicative rule drafting for ex post review

Note: This document is part of the AEMC’s Transmission Planning and Investment Review (TPIR) Stage 3 final report, published on 4 May 2023. It shows indicative amendments to the National Electricity Rules (NER) to implement an AER ex-post review process for ISP projects, as recommended in chapter 4 of the report.

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6A. Economic Regulation of Transmission Services

Part C Regulation of Revenue - Prescribed Transmission Services

6A.5A Capital expenditure incentive mechanisms

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with the *Rules*, then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.
- (b) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (the *Capital Expenditure Incentive Guidelines*) that set out:
 - (1) any *capital expenditure sharing schemes* developed by the *AER* in accordance with clause 6A.6.5A, and how the *AER* has taken into account the *capital expenditure sharing scheme principles* in developing those schemes;
 - (2) the manner in which it proposes to make a determinations under clause S6A.2.2A(a) if the *overspending requirement* or the ISP overspending requirement is satisfied;
 - (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a *regulatory control period* is to be based on actual or forecast capital expenditure;
 - (4) the manner in which it proposed to make determinations under clause S6A.2.2A(i) if the *margin requirement* is satisfied;
 - (5) the manner in which it proposes to make determinations under clause S6A.2.2A(j) if the *capitalisation requirement* is satisfied; and
 - (6) how each scheme and proposal referred to in subparagraphs (1) to (5), and all of them taken together, are consistent with the *capital expenditure incentive objective*.

- (c) There must be *Capital Expenditure Incentive Guidelines* in force at all times after the date on which the *AER* first publishes the *Capital Expenditure Incentive Guidelines* under the *Rules*.

Schedule 6A.2 Regulatory Asset Base

S6A.2.2A Reduction for inefficient past capital expenditure

- (a) Prior to making a decision on the regulatory asset base for a *transmission system* as required by clause 6A.14.1(5D), the *AER* may determine under this clause S6A.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced.

- (a1) For the purposes of this clause S6A.2.2A:

ISP project review period means the regulatory years, of one or more regulatory control periods, in which capital expenditure was incurred in relation to a reviewable ISP project.

reviewable ISP project means:

- (1) unless paragraph (2) applies, an actionable ISP project that has been commissioned and energised within a review period; or
- (2) if an actionable ISP project has been staged in accordance with clause 5.22.6(a)(6)(vi), each stage of that project which has been completed within a review period.

"review period" means:

- (1) the immediately previous regulatory control period (excluding the last two regulatory years of that previous-regulatory control period); and
- (2) the last two regulatory years of the regulatory control period preceding the immediately previous regulatory control period.

- (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:

- (1) the requirement set out in paragraph (c) (the *overspending requirement*);
- (2) the requirement set out in paragraph (d) (the *margin requirement*); ~~or~~
- (3) the requirement set out in paragraph (e) (the *capitalisation requirement*); or
- (4) the requirement set out in paragraph (c1) (the *ISP overspending requirement*).

Definitions of overspending, ISP overspending, margin and capitalisation requirements

- (c) The *overspending requirement* is satisfied where the sum of all capital expenditure that is not related to reviewable ISP projects, incurred during the review period, exceeds the sum of:

- (1) the forecast capital expenditure accepted or substituted by the *AER* for the review period as such forecast capital expenditure has been adjusted in accordance with clauses 6A.7.1(f) and 6A.8.2(h); and
- (2) any capital expenditure that is recovered by way of such part of an *approved pass through amount*, or of a *network support pass through amount*, as is permitted to be passed through to *Transmission Network Users* during the review period less any capital expenditure that is included in a *negative pass through amount*, or in a *network support pass through amount*, that is required to be passed through to *Transmission Network Users* during the review period.

(c1) The *ISP overspending requirement* is satisfied where the sum of all capital expenditure relating to a reviewable ISP project, incurred during the ISP review period, exceeds the sum of:

(1) the forecast capital expenditure accepted or substituted by the *AER* for that reviewable ISP project as such forecast capital expenditure has been adjusted in accordance with clauses 6A.7.1(f) and 6A.8.2(h); and

(2) any capital expenditure for that reviewable ISP project, that is recovered by way of such part of an *approved pass through amount*, or of a *network support pass through amount*, as is permitted to be passed through to *Transmission Network Users* during the ISP project review period less any capital expenditure that is included in a *negative pass through amount*, or in a *network support pass through amount*, that is required to be passed through to *Transmission Network Users* during the ISP project review period.

- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes capital expenditure that represents a margin paid by the *Transmission Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms.

Note

This paragraph also applies to capital expenditure relating to reviewable ISP projects.

- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes expenditure that, under the *Transmission Network Service Provider's* applicable capitalisation policy submitted to the *AER* as part of its *Revenue Proposal*, should have been treated as operating expenditure.

Note

This paragraph also applies to capital expenditure relating to reviewable ISP projects.

Determinations if overspending requirement or ISP overspending requirement are satisfied

(f) Where the *overspending requirement* is satisfied pursuant to paragraph (c), or the ISP overspending requirement is satisfied pursuant to paragraph (c1), and subject to paragraphs (g) and (h), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such amount as the *AER* is satisfied corresponds to ~~capital expenditure incurred~~:

(1) in respect of the overspending requirement - capital expenditure that is not related to reviewable ISP projects, incurred during the review period;
or

(2) in respect of the ISP overspending requirement - capital expenditure relating to a reviewable ISP project, incurred during the ISP project review period,

_____ that does not reasonably reflect the *capital expenditure criteria*.

(g) The amount determined by the *AER* under paragraph (f):

- (1) must not be greater than the amount calculated in accordance with paragraph (c);
- (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*, and
- (3) must be determined taking into account the *Capital Expenditure Incentive Guidelines*.

(h) In making a determination under paragraph (f), the *AER* must:

- (1) have regard to the *capital expenditure factors*; and
- (2) only take into account information and analysis that the *Transmission Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.

Determinations if margin requirement or capitalisation requirement are satisfied

(i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such of the margin referred to in paragraph (d) as the *AER* is reasonably satisfied would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.

(j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by any or all of the amount of expenditure referred to in paragraph (e) which should have been treated as operating expenditure.

- (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the *AER* must take into account the *Capital Expenditure Incentive Guidelines*.

AER may request information and conduct analysis

- (l) Nothing in this clause S6A.2.2A is to be taken to preclude the *AER* from:
- (1) requiring a *Transmission Network Service Provider* to provide such information; or
 - (2) from undertaking such analysis,
as the *AER* considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6A.14.2(a).

New Chapter 10 definition

ISP overspending requirement

The requirement set out in clause S6A.2.2A(c1).

New Chapter 11 transitional provisions

- (a) By the effective date, the *AER* must review and, where it considers it necessary or desirable, amend and publish procedures, guidelines and other documents published by the *AER* under the *Rules* to take into account the Amending Rule.
- (b) In amending the documents referred to in paragraph (a), the *AER* must follow the process for amending those documents (if any) specified in the *Rules*.
- (c) Amendments made in accordance with paragraph (a) must take effect on and from the effective date or any earlier time specified by the *AER*.

[Drafting note: The ‘effective date’ will be the date that the substantive provisions of any Amending Rule made will commence. This would be a later date than the date the transitional provisions of the Amending Rule commence.]